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SENATE BILL 565

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO WATER; PROVIDING FOR THE MANAGEMENT OF DOMESTIC
WELLS IN CRITICAL MANAGEMENT AREAS; ESTABLISHING PROCEDURES FOR
CHANGES IN PLACE AND PURPOSE OF USE OF WATER RIGHTS TO DOMESTIC
USES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-12-1 NMSA 1978 (being Laws 1931,
Chapter 131, Section 1, as amended) is amended to read:

"72-12-1. UNDERGROUND WATERS DECLARED TO BE PUBLIC
~~[APPLICATIONS FOR USE TO STATE ENGINEER--HEARINGS]~~. - - The water
of underground streams, channels, artesian basins, reservoirs
or lakes, having reasonably ascertainable boundaries, ~~[are
declared to be public waters and to belong]~~ belongs to the
public and ~~[to be]~~ is subject to appropriation for beneficial
use. ~~[By reason of the varying amounts and time such water is~~

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1 ~~used and the relatively small amounts of water consumed in the~~
2 ~~watering of livestock; in irrigation of not to exceed one acre~~
3 ~~of noncommercial trees, lawn or garden in household or other~~
4 ~~domestic use; and in prospecting, mining or construction of~~
5 ~~public works, highways and roads or drilling operations~~
6 ~~designed to discover or develop the natural resources of the~~
7 ~~state, application for any such use shall be governed by the~~
8 ~~following provisions.~~

9 A. ~~A person, firm or corporation desiring to use~~
10 ~~public waters described in this section for watering livestock,~~
11 ~~for irrigation of not to exceed one acre of noncommercial~~
12 ~~trees, lawn or garden or for household or other domestic use~~
13 ~~shall make application to the state engineer on a form to be~~
14 ~~prescribed by him. Upon the filing of each application~~
15 ~~describing the use applied for, the state engineer shall issue~~
16 ~~a permit to the applicant to so use the waters applied for~~
17 ~~provided that permits for domestic water use within~~
18 ~~municipalities shall be conditioned to require the permittee to~~
19 ~~comply with all applicable municipal ordinances enacted~~
20 ~~pursuant to Chapter 3, Article 53 NMSA 1978; and provided that~~
21 ~~as part of an application for livestock watering use on state~~
22 ~~or federal land, the applicant shall submit proof that he:~~

23 (1) ~~is legally entitled to place his livestock~~
24 ~~on the state or federal land where the water is to be used; and~~

25 (2) ~~has been granted access to the drilling~~

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1 ~~site and has permission to occupy the portion of the state or~~
2 ~~federal land as is necessary to drill and operate the well; and~~

3 ~~B. Whenever a person, firm or corporation or the~~
4 ~~state desires to use not to exceed three acre-feet of public~~
5 ~~water described in this section for a definite period of not to~~
6 ~~exceed one year in prospecting, mining or construction of~~
7 ~~public works, highways and roads or drilling operations~~
8 ~~designed to discover or develop the natural mineral resources~~
9 ~~of the state, only the application referred to in~~
10 ~~Section 72-12-3 NMSA 1978 shall be required. Separate~~
11 ~~application shall be made for each proposed use, whether in the~~
12 ~~same or in different basins. Upon the filing of an~~
13 ~~application, the state engineer shall make an examination of~~
14 ~~the facts and, if he finds that the proposed use will not~~
15 ~~permanently impair any existing rights of others, he shall~~
16 ~~grant the application. If he finds that the proposed use~~
17 ~~sought will permanently impair such rights, then there shall be~~
18 ~~advertisement and hearing as provided in the case of~~
19 ~~applications made under Section 72-12-3 NMSA 1978.] "~~

20 Section 2. A new Section 72-12-1.1 NMSA 1978 is enacted
21 to read:

22 "72-12-1.1. [NEW MATERIAL] UNDERGROUND PUBLIC WATERS--
23 DOMESTIC WELL PERMITS--CRITICAL MANAGEMENT AREAS.--

24 A. A person desiring to use the underground public
25 waters of the state for noncommercial domestic purposes, which

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1 may include a residential garden not to exceed one acre in
2 size, shall make an application to the state engineer on a form
3 prescribed by the state engineer for a domestic well permit.
4 Upon filing of the application, the state engineer shall issue
5 a domestic well permit for the use of water for domestic
6 purposes to the applicant except as otherwise provided in this
7 section.

8 B. A permit for a domestic well within a
9 municipality shall be conditioned to require the permittee to
10 comply with all applicable municipal ordinances enacted
11 pursuant to Chapter 3, Article 53 NMSA 1978.

12 C. The state engineer may deny an application for a
13 domestic well permit, or condition a domestic well permit to
14 limit the amount or use of water for domestic use, in those
15 areas of the state within a critical management area. A
16 decision to deny or limit a permit may be appealed pursuant to
17 the provisions of Section 72-2-16 NMSA. The state engineer may
18 declare a critical management area for domestic wells in
19 specific areas in the same manner as special orders made
20 pursuant to Section 72-2-8 NMSA 1978. A critical management
21 area designation is subject to review upon petition from a
22 political subdivision of the state filed with the state
23 engineer. The petition shall be considered in the same manner
24 as special orders made pursuant to Section 72-2-8 NMSA 1978.

25 D. A person denied a permit pursuant to Subsection

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1 C of this section may obtain a permit for domestic uses if the
2 person obtains an existing water right from within that
3 critical management area and changes the place or purpose of
4 use of the water and the proposed change will not increase
5 depletions within the critical management area. The change in
6 place or purpose of use shall be made:

7 (1) in accordance with the provisions of
8 Section 72-5-24 or 72-12-7 NMSA 1978; or

9 (2) without complying with the public notice
10 provisions required by Section 72-5-4 or 72-12-3 NMSA 1978
11 pursuant to rules adopted by the state engineer if:

12 (a) there is a change of use to domestic
13 uses with no change in location of use; or

14 (b) the quantity of the water right
15 transferred is less than one acre-foot and will provide no more
16 than one-fourth of one acre-foot per year to one household and
17 serve no more than four households;

18 (c) the state engineer determines that
19 the changes will not impair existing rights, be contrary to
20 conservation of water within the state, be detrimental to the
21 public welfare of the state or result in depletions of water in
22 the system greater than would have occurred in the absence of
23 the transaction;

24 (d) the permittee complies with
25 applicable municipal and county ordinances; and

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1 (e) the governing board of the acequia
2 or ditch association has given written approval of the transfer
3 when the water right to be transferred is from an acequia or
4 community ditch association.

5 E. A domestic well permit shall not be granted
6 pursuant to this section in any area of the state:

7 (1) if the owner of the land or household owns
8 or controls water rights at the location of the proposed
9 domestic well sufficient to provide at least one-half acre-feet
10 of water per year per household for domestic purposes; or

11 (2) for domestic use on land from which the
12 water rights have been transferred or changed to a new use or
13 location of use. "

14 Section 3. A new Section 72-12-1.2 NMSA 1978 is enacted
15 to read:

16 "72-12-1.2. [NEW MATERIAL] UNDERGROUND PUBLIC WATERS--
17 LIVESTOCK WELL PERMITS.--A person, firm or corporation desiring
18 to use public underground waters for watering livestock shall
19 make an application to the state engineer on a form prescribed
20 by the state engineer for a livestock well permit. Upon filing
21 of the application, the state engineer shall issue a livestock
22 well permit for the use of water for watering livestock to the
23 applicant, provided that as part of an application for
24 livestock watering use on state or federal land, the applicant
25 submits proof that the applicant:

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